2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

again necessary to distinguish between theory and practice. In theory the uru was supposed to avenge any injury done to one of its members for which compensation was not forthcoming, and on the other hand was collectively responsible for the payment of damages for any injury which one of its members might commit against a member of another group. In practice, however, according to my information, class affiliations were in general of greater importance than blood relationship. Whereas, as mentioned above, disputes between powerful individuals of different groups would commonly lead to war involving all their kinsmen and followers, the humbler members of the uru could not count with any certainty upon receiving support from their wealthy patrons. If, of course, the leaders of the uru were looking for a pretext to begin hostilities they might seize eagerly upon an injury done to any of their followers which would serve to justify their action. On the other hand if it suited their policy to remain on good terms with the opposing group the victim would obtain scant sympathy. He might perhaps resort to direct action to obtain redress but in the event of coming to grief would be disavowed by his own uru. In opposite circumstances an influential individual responsible for an injury might requisition the amount of the damages from his henchmen, if he decided to pay them at all, while the poor man could only hope that his patron would feel generously inclined. The claims of kinship were weighted in favor of the upper class and the right of resorting to arms tended to become their prerogative.

LAW

In the previous section I have discussed baranta as the ultimate means of settling disputes by recourse to arms. Normally, however, it would be considered only as a last resort. For the settlement of nearly all possible grievances of one individual against another the Kazak had elaborate provision in their system of customary law.[21]

Under this legal code all actions were considered as claims for damages by one party from another. No action could be taken against an individual in the interests of society as a whole but only on the charge of specific injury to person or property brought by the victim.[22]

Such charges did not distinguish between civil and criminal offenses. All injuries from murder to the misuse of borrowed property might be compensated for according to an elaborate tariff of fines, damages and reparations. It was the office of the bij, or judge, to fix the responsibility for damage done and to determine the amount of compensation to be paid.

This was accomplished through a process of trial involving the examination of witnesses for both sides under oath. It is difficult at the present time to estimate accurately the nature of trial procedure in the days prior to the Russian occupation. Most accounts of

[21] Adat or zan; the former is the borrowed Arabic term, the latter Turkic. See Grodekov, *Kirgizy i Karakirgizy*, 20.

[22] Dingelstedt, *Le Droit coutumier*, 331.

at. 116, p. 66 -- Analyst]
at. 116, pp. 66-67 -- Analyst]

2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

695 Kazak common law[33] describe it after it had been considerably codified and systematized
[692] by Russian administrators.[34] A system of "people's courts," presided over by three judges elected subject to government approval was instigated, trial procedure formalized, and appellate courts established. According to my informants, whose ideas though somewhat vague agreed on the main point, the court of the bij had formerly been rather loosely organized. As mentioned above there was no fixed succession to the office of bij; a particular case might be referred to any outstanding individual who would render a decision according to his lights or interests.

Trial procedure consisted of hearing the evidence under oath of direct witnesses, if any, to the acts under consideration and of specially selected "character witnesses," relatives of the two parties. The "character witnesses" were not directly concerned in the case under consideration but were chosen from among the more distant relatives of the litigants and had to be acceptable to the opposing side.[35] The judge for his efforts in the
[693] case was rewarded with presents from both parties if the affair could be settled to their mutual satisfaction,[36] but according to my informants he would frequently weigh his decision in favor of the individual from whom the largest present might be expected.

Concerning the cultural attitudes toward various offenses and specific methods of punishment or amounts of compensation there is great discrepancy and contradiction not only between the accounts of different writers but frequently within the pages of one report. The details of indemnification in particular cases are not of immediate concern but the question of the ultimate source of compulsion for enforcing them is of importance.

696 The bij's court had no direct executive or police powers. My informants were unable to say what would happen if a man refused to pay a judgment rendered against himself. Kargabaiev said, "It would never happen." I was not able to continue this line of inquiry but, although public opinion was clearly the final and only real source of coercion, yet it appears, as mentioned in connection with baranta, that the creditor might be permitted and perhaps expected to take matters into his own hands by attempting to collect the obligation by force. Grodekov[37] also gives indication that it might be possible for an individual incorrigibly lacking in social cooperation to be expelled from his uru.

689 Expulsion was also apparently the punishment for grave offenses against society as a
626 whole, as for example serious breaches of the exogamic rule for which it was impossible to atone by compensation. Such cases, according to the informants, were very rare but used occasionally to happen when a man and girl who were close relatives fell in love with one another. It would be necessary for them to "go to another aul, or to the mountains, or to the city."

[33] See: Iznatzov, *Obychnoe Prave*; Ibraginov, *Zamietki o Kirgizskom Sude*; Samokvasov, *Sbornik Obychnago Prava*, 200–43; Kozlow, *Das Gewohnheits Recht*; Petri, *Über die Rechtsbegriffe*; Grodekov, *Kirgizy i Karakirgizy*; Dingelstedt, *Le Droit coutumier*.

[34] The most complete account in English of the old Kazak customary law, largely translated from the Russian edition of Levshin, has been recently published by Riazanovskii (*Customary Law of the Kirghiz*).

[35] Dingelstedt, *Le Droit coutumier*, 323–26; Levshin, *Description des hordes*, 400.

[36] Dingelstedt, *op. cit.*, 220.

[37] *Kirgizy i Karakirgizy*, 246–48.

576 Did your father die?" They also avoid calling someone from a distance.

/12/ CHAPTER II.

The clan principle. - Custom

618 The enormous importance of the clan principle (1) stems from

1. On the clan origin as the most ancient stage of social development of all peoples, cf. Pervobytnoe Pravo /Primitive Law/ by Makim Kovalevskii, Moscow, 1886, Pt. 1. Clan.

[695] the law of force: the individual finds defence only in his clan. The clan answers for his transgressions. The propitiatory oath is imposed not on the responsible individual but on another person from his clan. (2)

2. Hence a man without a clan or a musafir always risks losing a case, being unable to procure his kinsmen to take the oath.

[672] The exaction of payment is also received not by the person but by
[628] the clan. When wergeld is not paid, not necessarily the murderer,
[581] but any person from his clan is killed. A bride belongs not to a
[429] person but to a clan. A widow goes to the nearest relative of the deceased, and a divorced woman must choose a new husband from the clan of her former husband. The nearest kinsman is always the guardian. Guests are received according to their degree of kinship.

The bearers of the clan principle are the rich men and the senior elders (aksakals). (3) Beyond the names of their direct ancestors and

3. Among the Sarts the aksakal is an administrative figure - a village elder. Among the Kazakhs he is the person in a given place who has the highest authority by blood.

their clan and lineage, the poor know nothing of the distant branches of their kin.

The volost administrators elected by the people retain their posts only when they belong to the strongest clan in the volost.

The decline of the clan principle is marked by frequent litiga-

tions between close kinsmen and the non-payment of penalties and debts for relatives. /13/ Among the Kazakhs we find the following proverbs concerning clan relationships. 618

Do not go hunting with a man of a strange clan. He will prevent you from shooting by being close beside you.

A fool will forget where he was born.

It is better to have a foal from your village /aul/ win a race than a horse of a strange village.

It is better to be a herder in one's own clan than emperor among a strange people.

He who does not know the names of his seven ancestors is a traitor.

A person who lives together with us still does not become a kinsman. A person who is a kinsman cannot become a stranger.

The dog does not forget the place where he ate, the man does not forget the place where he was born.

It is possible to be born together, but it is impossible to live together.

Do not call your own a bad kinsman, do not call your own eye (guard) bad, and separate him from the good.

In the law of 1867 on the administration of the Semirechie and Syr-Darya oblasts it was recognized as necessary to divide the nomadic population into volosts and villages in order to divide the Kazakh clans, for it was considered bad from the political point of view to unite a large clan under the rule of one clan chief. On this basis volosts were formed in 1867 which were mixtures of various clans as much as possible. But leaving the nomads the right to transfer from one volost to another made it possible for them to evade the designated aim of the government, which was to weaken the clan principle. 631 618

In order to sum up the results of the constant transfers of the Kazakhs from one volost to another in the period from 1867 to 1884 data was called for from the uyezd chiefs of the Syr-Darya region, from whom the following answers have been received. 631 618 178

1) The chief of the Auliye-Ata uyezd explains that since /14/ the time of formation of the volosts the clan principle has lost its original importance to a considerable degree. This is supported by the following: a) in the people's courts those who swear the oath are no longer appointed by the biis as from such and such a clan or division to which the defendant or accuser belongs, but from the volost, village, group of fifty or group of ten to which they belong; b) when the guilty are unable to pay the fine of livestock for their criminal deeds, the [695]

4:Grodekov--84 E-5 (ca 1885) 1889 RQ2 Kazak RQ2

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The custom of hetaeristic hospitality exists in secret in the north and in Siberia, but less in the south. In one of the volumes of the Materialy dlia statistiki Turkestanskago kraia, a custom is mentioned where a guest puts his hand on the bosom of a sleeping maiden three times, and if she does not push it away, it signifies her agreement. Bii Sultan Kanaev denied such a right of the guest, adding: "This is unthinkable" (ol suz imes).

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A wife and children who have not received their allotment do not have any property. If the wife lives with her husband, she takes part with him in the use of the property (malyna sirik). But she cannot manage the property under her supervision (khatyn biyleb mal beralmeydi). In the absence of the husband she manages the property. For example, on the demand of her husband's friend (tamyr), if he is dependable (isenimdi) she gives him things for his use, or gives them to him as a gift. When the husband returns he may not give his consent, and then the gift is taken back. The same thing takes place with an object sold by the wife in the husband's absence, in accordance with the opinion that "women have half a mind" (khatynnyng akyly yarymdyk) and according to the proverb: "a woman is without a mind, a frog is without a tail" (khatyn akylsiz baka kuyruksyz).

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Among the Kirgiz, spouses have common property (inchiles). Wergeld for a wife is not received by her husband, but by her clan. If she /94/ was wounded by someone, the fine for the wound, if the fine was called aibom, is received by her husband. But if this fine was recorded in the decision under the name of wergeld, then it is received by the kinsmen of the wife.

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The wife who goes away from her husband does not take anything wiht her (according to Abdrakhman, of the Auliye-Ata uyezd). Maykut (Auliye-Ata uyezd) transmits the information that in antiquity like the Siberian indigenous peoples according to Samokvasov, the property of the childless deceased wife, consisting of her clothing, fur coat, rug, blanket, bridal headdress and kerchief, is returned to her father or the person who married her off with this dowry.

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If a wife complains of the squandering or unprofitable exploitation of property by her heedless husband the bii does not accept such a suit in his examination, but sends her to the nearest aksakals, clan chiefs and authoritative kinsmen.

A wife may trade only with the agreement of her husband. A widow (tulkhatun) is not prevented from trading.

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A wife appears in court: 1) on matters of offense by the husband, etc., 2) in place of minor children, in the absence of her husband or

562 their guardian. Women are permitted to enter a complaint in court of
695 their rape. (1) In such a case the woman has the right to defend her

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1. When a woman declares that she has been raped, and this is based only on one such declaration, the people's court sentences the person accused by the woman to pay a material remuneration to the plaintiff.

interests personally before the court. The testimony of women has force only in affairs affecting them personally. In affairs of men, no interference of women is permitted. In the Kazalinsk uyezd, women are not even called to court in matters concerning men and kinsmen.

Women, for example, the wife who is the defendant, are called up for a brief examination, but if she denies her guilt, it is limited to that.

If the wife is in dispute with her husband, no credit is given to her testimony at all (the biis' books of the Perovsk uyezd).

[593] /95/ Wives use the seal of their husbands but not of their fathers, since, according to the explanation of bii Sagyndykov, a Kazakh woman who was bought for a kalym is without rights (ikhtiyri yok), like a slave (churi), like livestock (mal) or land property (mulyk yer).

A woman is not permitted to take an oath. (1) An oath is

1. According to Torgai, the women are allowed to take an oath by the Shariat. He transmits from the words of the elders that in an extreme case they dress the Kazakh woman in men's clothing. Perhaps this evidence is only an attempt to bring the customary law closer to the Shariat.

possible from the woman's side, i. e., from her commune, but this too is avoided. According to the Kirgiz Kurpetai Dauletkulov, it is impossible for a woman to take an oath, but her husband and his relatives can take it. Cases in which decisions were made on the basis of a woman's oath in the absence of male witnesses, are very rare. Bii Abdrakhman does not recall a case of murder, for example, which was committed by a woman, without male witnesses.

562 For a murder committed by a woman, wergeld is not changed.
681 For the murder of a woman, half a wergeld is sought. But for injury of a woman no less is sought than for injury of a man, and

deepened them and repaired them. The latter must withdraw when 312
the first proprietor presents witnesses or a personal oath. It goes to 423
the later proprietor in the case where no one knows of the digging 425
except the first person. If the second proprietors have planted trees or done building, the water belongs to the first owners and the trees and buildings to the second. The first owner can buy them off, and he can also demand their removal.

Where underground water is near the surface, everyone digs 312
his own well (kuduk). In digging a deep well, to a depth of 5-6 675
sazhens (chingrau) /35-40 feet/, the nomads hire workers who know the business, for pay which is determined beforehand, and which remains the same without regard to the depth at which the water appears. At the same time they enter a condition that no wergeld will be demanded for workers who might be covered by sandy dirt caving in.

According to Umurbek and others, the proprietor of a well 423
can refuse water to a stranger.

There were yarlyks of the khans on the right of the use of water, some of which survive to this day. The yarlyks do not mention land, but canals, winter camps and summer camps. The latter are mentioned without fail in one and the same yarlyk, for the Kazakhs cannot remain in one place the year round. If a winter camp which is owned by the yarlyk remains unoccupied by its proprietor, and during this time others settle on it, the proprietor receives it back, in any case even if they put buildings on it. The son of the previous owner can make the same demand, but never a strange man, whose right to the land was promised in some way by the previous owner. The newcomers give up the building, and remain on the neighboring land.

/106/ If a clan puts in a claim for land planted by another clan, 423
without founding the claim on any documents, the biis settling this 695
dispute must interrogate persons who are not implicated in the affair and also the elders from the people. If with all this no one knows whether the father or the grandfather of the plaintiff sowed this land, and even if it appears that they planted for two or three years, about 20-30 years previously, then in the case that the present proprietors have no documents, an oath is demanded of them.

If the fathers and grandfathers of the plaintiff did plant this land in earlier times, and then abandoned it and departed 20-30 years ago, and their children or descendants file a claim with no documents or proof except for traces of kurganchey or winter camps, established by them or their predecessors, then in case the opposite

423 side, i. e., the actual proprietors have no documents, these last are
695 required to swear an oath on the quantity of the land in dispute.

If land is planted by two clans, and one of the clans makes a complaint against the other, and during the investigation it is ascertained that one side has a document, and the other does not, and also lacks khan, kazi or beg documents showing that the land is in common between the two clans, then the side which has documents can refuse the other the use of the land.

If both sides on the disputed land have documents they must be carefully examined by learned mullahs who must decide which side has authentic documents and which has fraudulent ones, or those not worthy of attention. Nevertheless, an oath concerning the quantity of the disputed land is required from the side presenting the authentic, weighty documents, in order to support the suit.

If a dispute arises between two clans using common land, on which both sides have buildings, mills and trees, and if one side has nominal documents from khans or begs, while the names of the other /107/ side are not noted in this document, the affair is decided in favor of those having documents. Meanwhile those without documents must be indemnified for the value of their buildings, and then dispossessed from the land.

If one of the disputing sides shows a document delivered by the other side during the peaceable use of the land by them, and the documents says that the side presenting it yields the other a certain locality, or a certain number of kosh (1) of land, or else that a

1. One kosh is a pair of oxen and the amount of land tilled by them.

certain locality belongs to it or a certain number of kosh of land, then the side in possession of such a document is required to take the land on the basis of the document. Their claim to a larger quantity of land and water than is mentioned in the document is ignored.

If it is impossible to settle a land dispute of two clans using common land on the basis of inquiries of persons not implicated in the case, or on the basis of documents, it must be found out which side constructed buildings on the disputed land first, and to give an oath to this side.

423 The law of 1867 did not touch upon the land organization of
671 the natives at all. Now the code for the administration of the Turkestan area (the law of 12 June, 1886) establishes the land organi-

/141/ CHAPTER IX.

673 Crimes. - Thievery. - Baranta. - The salavat and limitations - Syuyunchi.

There is no word for "crime" in the Kazakh language. Dzhaman is means evil deed. That all crimes are no other than evil deeds is, of course, only in the eyes of those injured. When the latter speak of violence (zorlyk) and torture (dzhabr) the transgressors of their interests boast of their own heroism (batyrlyk).

The word guna (sin, wrong) does not fit our concept of crime. In the epic of Gurûly beloved by the Kazakhs, among other things, Avaz-khan is called gunakar because he dripped a bowl. He is obliged to shoot a certain number of ducks because of this.

The people distinguish a bad act from a sin. Evil done to the detriment of religious rituals and certain forms of incest are a sin. Sin is considered more serious than crime, but according to the concepts of the majority, murder is considered more criminal than a minor sin.

The offender who is subjected to punishment is called aybdi, aybdar. The word "transgressor, criminal" is translated most closely into Kazakh by the word ury, thief.

673 695 The view of the customary law toward crime is extremely simple. Criminal acts which have been under examination or which continue, do not exist, when there is no plaintiff, or when the plaintiff retracts his suit. Therefore in all suits without exception a reconciliation is possible and the affair can be broken off by the plaintiff. Crimes which are known about by the aksakals, biis and the entire people, but /142/ on which no plaintiff declares himself(1)

1. In other words, an injury to people without a clan, or an injury to people of a clan of small numbers.

are not punished. It is obvious, that the judgments are governed not by a feeling of justice, nor by a religious feeling, but a desire to bring the sides to agreement and avoid civil war, also in part by the danger of injuring weak clans, which might join forces against the strong ones, and finally by unwillingness to destroy the foundations of family life, the clan principle, and those few customs and rules of nomadic life (zang, adat, rasm) which have been worked out over time and under which the people have lived well.

1. [Should be "dropped" -- A]

685 thief should pay the owner the difference in money. In this last case, and also when all the stolen livestock is paid for in money, care is taken that the animal should not be underevaluated, for otherwise the owner demands the exaction of an additional payment (tolyktyk) from the bii.

686 694 An animal recognized at the bazaar is not confiscated. The person who has brought it there must present the man from whom he received it; otherwise, if he declares it to be his own property, they go to the bii (Abdrakhman, Auliye-Ata uyezd).

An animal which is recognized in the possession of an outside person, who did not steal it himself but bought it at the bazaar, is confiscated only if the person recognizing it proves by his personal oath, and the testimony of five (1) witnesses, and the oath of one

1. According to other information, seven witnesses.

witness that the recognized animal or other property actually belongs to him. The animal is not confiscated until the decision on the case. If a sheep is recognized in the possession of a man who bought it at a bazaar, neither testimony from witnesses nor a personal oath gives the owner the right to take it away, since the sale of sheep at a bazaar takes place without guarantors and there is no sidzhil' (2)

[695] 2. A copy of a decision of judges, kazis and other officials is called sidzhil'. According to this copy, a thing which is recognized by an outsider, who proves by the testimony of witnesses his right to it, is confiscated. A copy of such a judgment is given to the defendant, /166/ so that he can sue the person from whom he bought it for his losses. There is also a sidzhil' in civil suits for money. If an animal is confiscated by sidzhil' a karkara destroys the force of the sidzhil'.

The testimony of several persons, with their signature and seal, with the countersign of official persons is called a karkara. In this testimony it is explained that such and such an animal, with an exact description of it appended, constitutes the homebred property of such and such a person.

for them ordinarily. (Communicated by Yunusov).

685 /166/ Placing one's brand on a strange animal is considered to be stealing. According to Abdrakhman, this happens rarely. For

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his relatives appear and say to the volost official: "Give up this thief to us. We will interrogate him well. If he is guilty of something we will make him pay for it. If he is innocent we will present you with proof" (bul uyyny bzning kolymyzga ber, muny abdan khub suralyk; algan bulsa, maldy alyb berelik, algan bulsa, almagan iken dib sizdi isenterelik). In agreeing to give up the prisoner, the volost official takes a receipt (tilinen khat) for the fulfillment of the promises mentioned above.

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The owner who has already received his property can receive a supplementary atton from the thief. Sometimes the biis and aksakals among the relatives of the thief say: "He is innocent of other thefts (uzge maldan) take atton from him and give him a voucher for the fact that you will not open suit against him for anything lost" (falan vakytda dzhogalgan degen maldy suramaska), or else: "But if you are thinking of opening a suit, give us back the atton you took from us." They never take the atton anymore, however. This custom existed under the Kokandians and khans. In this way, as was explained above, the thief was often released without bringing him to a court examination (Torgai).

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/169/ A candid confession does not lighten the punishment. On the contrary, when the bii sees the offender acknowledging the fact of his commission of the crime without shame, he may considere him a hardened ruffian or a professional thief and impose a higher fine because of this, or punishment by whipping. (Mikebai, Perovsk uyezd).

The plaintiff for his part, seeing that the defendant confesses from honesty and straightforwardness (er iken, muynyna, alyb otur, chinin aytty) can resign from the whole suit or part of it (Perovsk uyezd).

When there is a voluntary confession (azamat iken, uzi kelib aytty), with or without a court summons, the punishment can be reduced, and in view of repentence, completely forgiven, but only with the consent of the plaintiff (Auliye-Ata uyezd).

If a defendant denies the fact of his confession at a previous interrogation by a village elder, confirmed by a written act, the biis consider it possible to require a purificatory oath, as with a simple disavowal.

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Stealing with house-breaking or without house-breaking, from a trunk and from an open place are punished alike (Torgai). (1) There

1. According to Makovetskii, Pt. I, p. 81, the easier a theft is, the more shameful it is considered. On this basis

The thief himself cannot receive syuyunchi, even though he also brought back the lost animal. 431

Kinsmen cannot demand syuyunchi.

If someone receives syuyunchi for promising either to find the animal or to detect the thief (muynyna koyib beremen), and after that if he does not succeed in accomplishing the one thing or the other, he returns the syuyunchi received in one and a half times the amount.

The bit aygak (personal witness) who discovers a murder receives one-fifth of the wergeld as a reward. For the discovery of or informing about thieves 4 tillias are given for a horse, and 8 tillias for a camel. The witness is awarded the amount indicated only if he himself, in the presence of the biis, indicates the thieves. In order to confirm the witness's accusation of the person indicated by him as having committed the misdemeanor or crime, the biis sitting in judgment require the accused to choose persons from the side of the witness to take an oath (1) that he has actually indicated the guilty person. But 431 695

1. The choosing of persons from the witness's side to take the oath takes place in the same order as the selection of persons from the side of the defendant.

if /175/ the accusation of the person indicated by the witness is not confirmed after the admission for the oath by the persons chosen, the accuser pays back the person from whom he received syuyunchi in an amount double what he received. (Absaliamov, Chimkent uyezd).

/176/ CHAPTER X

The organization of the peoples court by the law of 1867. - The rank and position of the biis. - Arbitration. - The order of selection of cases. - Attorneys. - Witnesses. - Guarantors. - Concrete evidence. - Payment of the bii /biilyk/ . - Losses and expenses. - The organization of the people's court by the law of June 12, 1886. 692

Among the Kazakhs the people's court was organized in the following manner on the basis of the law of 1867.

The people's court is the examination of cases according to folk customs by chosen judges - biis.

The following types of courts were organized: 1) the individual court of the biis, 2) the volost session of biis, and 3) the extraordinary

before an exact knowledge of customary law, especially since now every bii has his own devices, which often contradict each other (chatak). 693

The biis used to be judged by other biis or clan heads, but now they are tried on the common basis.

Bad language, yelling and scuffling in court is prosecuted by the biis. No prosecution is made for infliction of wounds in court if the wounded person was guilty, but if the guilty person causes the wounds, he is liable to the payment of the same fine which is imposed for the same crime committed outside the court. [687] 683

The punishment is not made heavier for murder and fighting before the court.

If someone dishonors the bii in words, they rebuke him saying: "Your tongue touched upon the bii" (biige tiling tiidi), and he is forced to ask forgiveness, but no fine is imposed, the more so because the bii hesitates to enter a suit concerning this. 693 683

/180/ The wergeld is not changed for the murder of a bii, but a larger fine is imposed for wounding him than for wounding a private individual. There is no prosecution for blows inflicted on a bii, if he owed money, but for unjust blows a fine is imposed which is higher than the usual one. For the exaction of these higher fines it is necessary 1) that the act be proven, and 2) that the person guilty of injuring the bii should be from the district /okrug/ of that bii. The injury of a bii from a strange village is prosecuted in the same way as the injury of an ordinary person.

The word mekhkeme, i. e., tribunal or court chamber, was not used in former times. This is now the name for the place or tent designated by the bii for the admission and examination of complaints in the Perovsk and Auliye-Ata uyezds. The biis sit on felt (tekemet), in the place of honor in the tent or room - the "tur", which is opposite the entrance, and before them on the ground are the plaintiff, the defendant and other persons who have been called in. In general, however, the examination of cases takes place anywhere and at any convenient opportunity. The court is where they find the bii, be this in the road, on a visit, or at a bazaar. The most precious convenience to the nomads lies in this simplicity of the conditions of a court. An experienced bii has his book of decisions and his seal with him in all places at all times. 695

The bii first hears and enters into his book the complaint of the plaintiff (dagvager), and then gives the floor to the defendant (dzhuabger tanbys) or to the witnesses. All those called to the court

interrogation explain themselves not only to the bii, but also among themselves until the actual announcement of the decision. During these negotiations the bii learns the desires and opinions concerning the settlement of the case in various ways, by requiring an oath from one side or another or from a certain number of tents, after eliminating a certain number of "disputable ones" from among them. The bii bases his decision upon these negotiations.

If the trial is held by two or more biis, the biis withdrew from those present to confer among themselves.

In former times when the sides were satisfied with the decision, /181/ each held one end of a colorful rope (aladzhip), which was cut by the bii deciding the case as a sign of final division. When the ritual of cutting the "colored rope" (aladzhip kyrkpak) or "the twig" (chibyk kispek) had been carried out after the decision of a case by a bii or outside person, the case was not accepted for reexamination (khukmdi buzmak) by a bii or a khan, if it was simply proven that this ritual had been carried out.

Without this ritual, a case which had been decided by a private person in the capacity of a court of arbitration could be reexamined by a bii of the white bone but only on condition that the reigning khan was of a clan of the same white bone. In general a case decided by a bii could be reexamined by a khan. Complaints addressed directly to the khan, by-passing the biis, were either examined by him personally, or else, by his order, by a bii from his suite. The khan took a payment (khanlyk) of approximately one-tenth of the suit for his judgment of the case.

In cases of wergeld, instead of cutting the twig there was a custom of cutting the tail (kuyruk kisti). The bii cut the tail of a calf which was held by the two ends /sic/ by the plaintiff and the defendant, and received the calf as his biilyk, and he was then obliged to testify to the existence of the pacification in case of need.

Now the place of the aladzhip is taken by a voucher from both sides, consenting to everything adjudged by the bii (nendey khukm kylsa razy men). The reexamination of the case according to circumstances discovered after the first decision is possible only when, by force of the new circumstances, the guilty party is led to confess (muynyna salsa), otherwise the decision remains in force (bishim bolyb kalady). (1)

1. In his Notes on the Kazakh Court, I. Ibragimov says: Those who are dissatisfied with the decision of the judge

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or the clan chief wait patiently for a large gathering or a memorial service, to which they go, usually taking with them an elder from their village or of their clan, and this elder must defend their complaint before the gathering, and a reexamination which is considered final depends on this gathering. Torgai notes concerning this custom: Biis and elders are both at memorial services, and therefore both dissatisfied sides go there. A bii himself sends them there for pacification, but the host of the feast or memorial service forbids the settlement of court cases lest the celebration be spoiled (buzul masyn).

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A bii does not enter into the examination of a civil case unless he is turned to.

/182/ In former times a bii who knew of a crime concerning which no complaint had been presented could make an investigation of it on an equal footing with aksakals and respected persons (yakhsy ksiler), for the satisfaction of the sufferer.

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A bii can refuse to examine a case, especially for bad people. On the other hand, persons dependant on the bii, now excluding those serving him as well, can also refuse to be examined by him (Auliye-Ata uyezd).

If a trial takes place under a bii from the volost of the defendant, and both sides are dissatisfied by his decision, they can turn to an outside person (khalis ksi) or to a bii from another uyezd, but on doing so they must compose a written document (saldym kagaz) concerning the choice of the bii, as a result of which the trial becomes one of arbitration, and final. Otherwise they can turn to a volost official, who either refuses or consents to designate a new examination, but this time not from a single bii but from three or four.

If the plaintiff and the defendant are of different volosts, in the Kurama uyezd it is the custom to choose any bii of a third volost as arbitrating bii.

A court of arbitration (triteski sot), from which it is impossible to appeal, is considered in the present official Kazakh language to be an examination by biis, which is preceded by a document from the sides concerning the choice of the bii or biis, and consent to the decision which they will decree.

If both sides were from one volost it is difficult to appeal. It is easier if they are from different volosts, because the biis are suspected of partiality toward those in their jurisdiction.

For an extraordinary session /Russ. chrezvychainyi s"ezd/

692 (kurulachak s"ez, chirizvichaynoy s"ez), one bii was sent for from every volost in the uyezd, according to the election of the biis of the given volost. Every bii who wanted to get into the session, as Torgai expresses it, gave the electors, the biis, a bribe of 2 to 4 rubles each. If there were many who wanted to go, they cast lots (shek salady) among themselves. The person to whom /183/ the lot fell (shek tusken) paid his electors the money mentioned. After this they elected him with the affixing of a seal, and he departed for the session.

There was no prosecution for a bii's refusal to take part in the examination at the session.

Not more than two or three biis are challenged from the session by declaration of the plaintiff, because of their kinship, matchmaking, acquaintance with the defendant, or the receiving of bribes. In a court of arbitration there are not supposed to be challenges because each side chooses its biis itself. For false suspicion (usek suz) in relation to a bii (kinship with the opposing side, bribes, etc.) punishment is not customary.

The declaration of the challenge of a bii is not accepted after the judgment of a case by the session.

695 The meeting considers the decision being appealed and all the papers relating to the case: acts, documents, (1) reports. It

1. In an official document of a debt, the year, month and day it is issued are indicated; the period in which it is to be paid; the sum, including the interest, calculated by the period over which it is to be paid; its authentication by the village head, etc.

The sum which is recorded in the document is sentenced to be paid.

If the person who presented the document and the guarantors mentioned in it disclaim it, but the plaintiff and the bii recognize it, it remains in force without the assignment of an oath. In just the same way, if one of three persons presenting such a document recognizes it, it remains in force.

hears out the declarations of the opposing sides, and recalls, if necessary, those witnesses whose testimony was already mentioned in the decision under review, while also taking new evidence into equal consideration. In land disputes they ride out to inspect the

localities. 695.

In recent times it has come into custom and is considered "according to customary law" at the meetings to declare a judgment by default (sirt khukm, sirt kesik) after the defendant has failed to appear twice. This was not in the old customary law. There are always complaints concerning judgments by default, with the declaration that "the biis did not act according to customary law."

In their decrees the biis must state clearly what /184/ the petitioner sought and what was adjudged in his favor, or how the case ended, and especially to record the biilyk established for the judgment.

A copy of the judgment, cut out from the book (1) must be

1. There is a model of the form of the bii's book in Supplement No. 6.

given to the person in whose favor the case was ended, in final form, as a result of swearing or not swearing the oath, if an oath was assigned.

A copy is given to the unsatisfied side, if it declares dissatisfaction with the judgment from one bii of over 100 rubles, or after a theft, at the volost session, for a suit for over 100 rubles, or for baranta or for murder.

When he receives the copy the receiver must write a receipt in the book on the reverse side of the report.

In the copies they report briefly and clearly: the content of the suit without explaining the testimony of the opposing sides; the judgment with an exact indication of the sum exacted and the biilyk; the time when the judgment must be carried out; the year, month and day of the judgment; the number and the book from which it is cut out; the affixing of the seal.

According to Amanbai, the weak are subjected to injustices 695 and force at the volost sessions, which assemble in the steppe.

In the opinion of sultan Babagaliev, (2) only Kazakhs of their 661

2. Lieutenant of the army infantry, Kazakh of the Perovsk uyezd.

own volost and persons of means receive satisfaction at a volost session. Indeed the biis of the extraordinary session hesitate still less than the biis of the lower instances, knowing that the judgment of the extraordinary session is final. On the eve of the court session they

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simply bargain with the litigants on the amount of the bribes. (3)

3. Sultan Babagaliev advises, among other things, the following measure: to call together half of all the biis in the uyezd to the uyezd government and all the volost administrators; from their number the uyezd chiefs would designate one volost official as chairman every day, and one bii apiece from each volost as members of the court, and would seat them in special quarters where outside persons should not be admitted, so that biis not invited to judge (dzhanbas bii) would not interfere with the case, as often happens. The strength of the measure proposed lies in the fact that neither the biis nor the litigants should know /185/ which biis would examine which case. They should discover this immediately before the beginning of the examination. At these sessions it is necessary that the uyezd chief or his assistant should make certain that the biis do not postpone a case to the next day, which is the equivalent of receiving bribes.

/185/ The extortion of bribes (para) by the biis may take place before outside persons or in private. In the latter case the bii hints in the following manner: "This case depends entirely on me. Other biis would take so and so much money, but I take nothing." Then with the mediation of his man the bii can make himself understood more openly to the defendant: "You are right. They will discover the justice of your case and impose an oath on those who exonerate you." (ak sen aklykka shygarady, dzhandy uzing shygatugun dzheringe salady). He says to the plaintiff: "We will require an oath from the side which does not acquit him. We will determine a larger fine for you. We will also sentence him to pay the court costs and produce the penalty for you without delay. You are losing nothing, but give us what you can"(dzhandy chykpaytugun dzherge salamyz, aybyngdy kubeytamiz, yana chygyndy onyng muynyna salamyz, yana toktausiz mal tunderib beremiz, sen kuymeysen, bizge beretuguningdi ber) (Torgai). Later the judgment is decreed on behalf of the side which gave the most. (1)

1. This is included as an example. It is obvious that extortion by the biis is not a kind of common occurrence which invariably accompanies bii justice.

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The volost administrators also influence the judgment. If a a volost official is protecting the defendant, the bii imposes an oath on the group of fifty of the defendant, when it was necessary to impose it on a village. He does this so that there will be a greater probability of the appearance of the juror (shygatugun dzher), for in a close circle there are fewer enemies, and even these are challenged as "disputables." The bii declares: "Say first of all who your enemies are or the disputable ones." The defendant names two or three persons.

If the plaintiff enjoys the favor of a volost official, the defendant is brought forward at once, and the bii imposes an oath the village of the defendant instead of the group of fifty. Later, when the disputable persons are challenged, the defendant is required to prove that the persons challenged actually had been involved in litigation with him at some time.

/186/ If the bii is not decided on doing what is pleasing to the volost official, the latter encourages him with the words: "Do not be afraid of an appeal. The exaction will be taken care of before then, and after that we will see somehow" (sizning khukmingiz buzulgancha dzhuaberdgan mal tulenib kalady).

When a bii learns that the volost official received a bribe from the defendant while he himself only received a bribe from the plaintiff, he sends to the defendant to receive a bribe before deciding the case in his favor. If by now the defendant will no longer give the bii anything, the bii judges the case in favor of the plaintiff, figuring in this way: "I have rendered a service to the plaintiff, my affair is closed. Let the volost official change my decision." But if a copy of the sentence has already been given out, a reversal of the decision of the bii can follow only by means of a volost session, and the volost official is left to paralyze the judgment by not carrying out the exaction or evaluating the object of the exaction at higher than its real value (Torgai).

For an unjust decision of one bii, overruled by many biis, the first is not prosecuted. (1) But if it is proven, with the help of 687

1. In Kazalinsk in 1887 there was a case in which a judge was badly beaten by a defendant for an unjust decision. The complaint by the bii against the offender, as an act during the fulfillment of the duties of office, was transferred to a court of arbitration, which sentenced the offender to three

694 dzhiing iqhinde). As an excuse they use the saying:
683 "quarreling and scuffling is a path which has existed since ancient times" (uruspak talaspak burunnan kalgan yul).

Since signs on the face are visible, they set value on the face, and they say to the offender: "you put a brand on my moon-like face" (ayday betime tamga saldyng), i. e., you mutilated my clear face. A wound on the arm for example is not important, unless a bone is broken (Torgai).

694 A rider can beat the person being summoned, in order to force him to go faster. A wound inflicted during this is not prosecuted.

When the volost official delays the summoning of the litigants and the witnesses, and the biis delay the examination of a case, the defendant hastens to declare a suit completely like the suit of the plaintiff (karsy dau, karsyma karsy dau). This is also done at the time of the examination of the case, sometimes /Inserted page. Picture. Caption: A session of the people's court: the plaintiff, bii Akhmet Turgaev, bii Chekaman Iskenev, bii Chokai Turgaev, the defendant. Drawing by Akhmatov. /A 189/ also by the witnesses. But the biis avert such a suit. Exceptions to this are suits concerning animals recognized at a bazaar.

695 Mutual suits between quarreling kinsmen remain without consequence because of their extreme complication, or are led to pacification "in view of kinship." When it is impossible either to avert or pacify, then an oath is required from each litigant on his suit (Perovsk uyezd).

According to bii Sultan Kanaev, in mutual suits without witnesses two propitiatory oaths are given: one to the plaintiff himself, and the other to the defendant himself (bas basyna - on the head of each of them), the first on the suit which was declared earliest, the second on the cross bill. A biilyk is taken for each of these suits, but only when the suit is made good. Otherwise the biis limit themselves to collecting for the affixing of their seals (mukhrane).

If a part of a suit is shown to be just, it still does not follow from this that the entire suit is just. The part of the suit which is subject to suspicion must be approached as though it were a special suit.

The combination of crimes is not taken into consideration. Every crime is judged separately.

If a suit touches upon two objects which are usually not found in one place, the suit is divided (biis' books of the Perovsk uyezd).

7 [Not reproduced--A]

Often the first plaintiff is joined by a second, in order to get 695
an easy profit because of the conviction in the first case. Therefore the case of each plaintiff and each defendant must be examined specially.

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Attorneys (vakil) already existed under the khans. They were 693
also called "those who buy suits" (daumy satyb algan).

According to Zagriazhskii, (1) minors and insane persons cannot

1. Materialy dlia Statistiki Turkestanskago Kraia /Materials for Staistics of the Turkestan Region/, Pt. IV, pp. 194, 195.

be attorneys. The attorneys must convince the biis that the conducting of the case is specifically entrusted to them. They must /190/ be present during the testimony of the opposing side, and they procure the fine which is exacted for their principals. If the sender of the [676]
trusted person is sentenced to a fine or to corporal punishment the sentence is carried out on the sender. The sender of the trusted person can protest against the judgment of the bii, if his agent abused his trust.

According to another source, the constituent can refuse the settlement of the agent in whom he has trusted, if the former has not given a written warrant.

Warrants are not the custom in the Kazalinsk uyezd, according to the communication of E. A. Aleksandrov, but persons are admitted who know how to speak in court. Such persons never appear in court without their clients.

During the swearing of an oath, only the plaintiff or only the constituent (ak iese) was present according to customary law, and this is still true today. The person entrusted by the constituent is never present during the oath of the opposing side.

Every man who has reached his majority who has seen or knows 695
of a crime is admitted to give the testimony of a witness. A true (nagz) witness (aygak, gua) is considered to be he who has brought in the captured thief with the goods, or has taken the stolen goods away from him together with a horse and a coat, or has received syuyunchi from the owner before the people and the authorities (Perovsk uyezd).

Informers are divided into those who are open(bet aygak) and those who denounce behind the back (syrt aygak). The former are called to prove the truth of their words face to face with the thief.

695 The latter only inform as to who did the crime and under what circumstances, but do not wish to be witnesses in the examination of the case. They say: "We speak behind the back, we cannot speak eye to eye" (sirtinen aytamyz, betinen aytalmaymiz), according to bii Sultan. According to Aleksandrov, custom does not approve of denunciations concerning crimes, and informers are always under suspicion in their communities, according to the proverb: "a thief has one cheek black, but an informer has two." [577]

/191/ The testimony of witnesses is confirmed by oath, not by them but by their sides, i. e., the clan or community (Perovsk uyezd).

If there is no information and no trace of stealing and a man appears who declares that he knows the thief and takes syuyunchi from the victims, and the thief, who has not confessed, begins to be tried, the man who has received syuyunchi is obliged to furnish an oath from his relatives for the amount of the stolen property. If he does this and thereby proves the theft and forces the guilty ones to pay, the victim of the theft receives only the property stolen from him and the syuyunchi given the accuser. The fine exacted (ayb) goes to the accuser. (Bii Sagyndykov, Chimkent uyezd).

Among the Kirgiz, the witness himself does not swear an oath. His close kinsman (yanasha) takes the oath for him, even though he be a bii or a volost administrator.

If the veracity of the witness is unquestionable, i. e., if the thief was caught in the act, if they took a coat and horse from the thief, and if the witnesses are very respected persons or those who have power, then their words are believed without oath. The imposition of an oath from them is generally avoided, out of respect to persons who enjoy position in the community. When there is, nevertheless, a basis for not believing their words, an oath is required from the side of one of the litigants, as the custom is in trials without witnesses.

If the guilty parties do not confess, even when the testimony of the plaintiffs are confirmed by witnesses, an oath is imposed on them.

If a witness compromises himself by his testimony, for example, saying that he permitted the defendant to tether the stolen camels, when at the same time the defendant is denying this, the biis still do not see their partnership in stealing as proven. In such a case they either leave the defendant to swear a purificatory oath,

after which the witness appears as the thief, or give the oath to the witness to defend him from chances, i. e. a false oath of the defendant (Mikebai).

If a father indertakes to prove the innocence of his son, /192/ he is called a witness, and they give him a period of time in which to find the thief, after which, if he has been unsuccessful, he is sentenced to pay the sum of the suit (the biis' books of the Perovsk uyezd).

A mother and other female relatives are permitted to give testimony as witnesses, but they do not furnish oaths. For this reason when they see a crime committed, women as well as minors call in grown men if possible as witnesses.

According to Umurbek (Auliye-Ata uyezd), witnesses in the full sense of the word cannot be 1) minors, insofar as they actually are unable to be convincing; 2) persons who have a bad reputation, for their testimony does not carry weight; 3) women, concerning outside affairs, and 4) madmen - under all conditions. E. A. Aleksandrov adds to this list persons of illegitimate birth, whose testimony as witnesses is given no credence at all in the Kazalinsk uyezd.

Servants testifying in favor of their masters are not taken into consideration. Servants who testify against their masters, not maliciously but in good faith, are taken into account but are not permitted to take an oath.

No special significance is attached (muncha iltifat kylmaydy), to persons who bear witness on behalf of their kinsmen, in view of their kinship ties (tuuskandyk klady, yakyndyk kylady). If they bear witness against them, and if, because of their integrity, they are deserving of trust, the case is decided on the basis of their words, without an oath. If they are bad people, they are not believed, but oaths are not required. The closer the kinship, the less they are permitted to swear an oath.

If each of the litigating sides has its witness, they permit the one who gives the most reasonable and well-grounded testimony (br meme sebebi bar iken) to confirm his testimony by oath, and the one who is less bound by kinship to his side.

Formerly the witnesses gave testimony without oath. Now /193/ witnesses are almost never interrogated without requiring an oath from their side, because the plaintiff is not satisfied without this.

If there are several witnesses, after they have all been interrogated an oath is required from one of them or two, depending on the sum of the suit, but only from one side, by the selection of the

•695 opposing side, for example, of the defendant (dagvagerining tang-lauyncha).

The interrogation of witnesses with an oath is necessary in criminal cases, naturally, only when the defendant pleads not guilty. In civil suits if a witness was not only present, but was also invited as a witness in the conclusion of an agreement, the transmission of money, etc., he gives testimony without an oath, even though the defendant denies his guilt. Once both sides have agreed on one and the same witness, the case is decided on the basis of his words, and one side can no longer bring an exception against it afterwards.

The refusal of a witness, not from support of his own words, but of the solemn confirmation of them by presenting the oath, is now considered as a conviction of his side (Umurbek).

According to Torgai, an oath is required from a witness when the litigant declares him to be partial (spur, i. e., disputable).

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696 There are two kinds of guarantors: 1) tankefil' (1) or erefil',

1. According to Aleksandrov, tankefil' means unfaithful, so that it should be pronounced tanykefil'.

2) zarkefil' or malkefil'. The former engage themselves to present for confrontation (taub beredi): suspects who are under investigation and trial, or thieves or criminals, including those under sentence, and also in the case of non-fulfillment of some sort of pact. The latter are held responsible with their property when such persons fail to fulfill pacts and obligations. Guarantors of the second type are usually karavanbashis, while guarantors of the first type are the relatives who take a thief from the hands of the volost official for correction.

Both types of guarantors are characterized, according to Makovetskii and according to bii Sultan, by the saying: "a guarantor dies for a man, /194/ and pays for property" (erge kefil' uledi, malga kefil' tuleydi).

Both sides can have one and the same guarantor. The death of a debtor (karzdar) for whom a zarkefil' has been guarantor, does not relieve the latter from his property resposibilty for the deceased. A guarantor who has paid for the obligations of a negligent or deceased debtor can open a suit for the exaction of the losses from the heir.

The tankefil' is not held resposible for the death of a man released on bail. If he flees, the tankefil' is sentenced to the same sentence which had been imposed on the person who fled. But according to Aleksandrov, the tankefil' is held responsible according to agreement.

When a middle man becomes a zarkefil', both sides pay him kafiliane for this. This happens in obligations of debt.

If a person who has bought stolen property unknowingly has it confiscated, he turns to the person who sold it to him. If the seller declares that he did not sell it, and there were no witnesses present, then they require him to swear an oath to clear himself. The guarantor pays after the oath is sworn. If the guarantor denies that he guaranteed it, they also require him to swear a purificatory oath.

Sometimes the owner of a thing given out in debt touched the arm (bilek - from the elbow to the wrist of the arm) of the guarantor. If the fact of this contact is beyond doubt, on this basis the bii sentences the guarantor to pay the debt because of the insolvency of the debtor (Perovsk uyezd).

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Among the convincing proofs in a trial are: the confession of the defendant, contradiction of testimonies during interrogation, the generally known corruption of the accused, his disposition for lying, the absence of definite occupations, capture on the spot of the crime, the finding of the lost property with the defendant, fresh tracks leading from the place of the crime to his tent, his flight from the trial, his non-appearance at the trial, the testimony of witnesses, every sort of written document, etc. In the Perovsk uyezd one case of wergeld was broken off on the basis of the testimony of a Russian doctor that death was by natural causes, and not /195/ the consequence of blows. In the Kazalinsk uyezd the chief of the uyezd transferred the case of Suleiman Burdzhanov, who lost an eye in a fight, to an extraordinary session, on the testimony of a Russian doctor. (1)

1. In the Kazalinsk uyezd there was a case in which biis required wergeld in spite of the testimony of a doctor who stated that the loss of the eye was due to illness.

Convincing evidence loses force when the defendant denies the fact of confession, capture, the finding of tracks, the giving out of

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written documents, etc. For this reason the capture of a thief on the spot of a crime, the confiscation of the stolen goods from him, the finding of fresh tracks, etc. must be immediately reported to the authorities or to the senior people in the village.

If all the testimony of a litigant is based on a certain circumstance which is later shown to be false, this is enough to decide the case against him.

Material proof, such as a bloody knife, does not have great importance in the court of the biis, for the blood could be the blood of a sheep, etc.

When a judge, after a precise (ayrmachyk) and impartial examination (tiksharyb karaganymyzda) of the evidence presented, convinces himself of the degree of guilt or innocence of the persons examined, for example, the defendant, then without regard to the latter's firm assertion that he is innocent of the charge (dagvasynan saumen, aman ben), the judge decrees the judgment without oath. The same is done among the Kirgiz.

When a judge believes he finds innocence or guilt from the evidence presented, but will not take resposibility on himself for his opinion, he assigns an oath to be sworn by the side of the witness, i. e., his community or clan, and rarely by the witness himself. A bii assigns an oath to be sworn by one of the litigating sides only when there are absolutely no witnesses or because it is either impossible or inconvenient to require an oath from them.

A suit is not dismissed for lack of evidence, because the plaintiff is not obliged to prove the justice of his suit. On the contrary, the defendant is obliged to prove his innocence. From this it is understandable why /196/ the situation of the defendant is called "nashar", helpless, and he is given the possibility of confirming his words by an oath from his side, for the sake of mitigation. In general the assignment of an oath from a certain side can under certain circumstances make things easier for that side.

It is said in Makovetskii, I p. 69: Even though convinced that a denunciation is false, the bii nevertheless continues his examination of a case and assigns an oath from the accused. Sultan Kanaev reports that in this case the biis ask the plaintiff whether he still insists on his suit or not (osyny suraysyn be ya suramaysyn), and if he insists, then an oath is assigned. But fraudulent suits concerning the theft of money should be dropped without consequence without asking the plaintiff. "In general all suits concerning the theft of money are false, for how could money be taken from anyone without killing him or wounding him?" added bii Sultan Kanaev.

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692 in the volost.

Any person of the inhabitants of the volost can be elected to
692 the people's courts who enjoys the respect and trust of the people,
693 and who has[1] been subject by sentence of the court, to punishments in excess of arrest for seven days or monetary fine of 30 rubles, who is not under judicial examination or under trial, and who is no less than 25 years of age.

The elections for the people's courts take place by a volost meeting of the electors, who are chosen by village meetings with one for every 50 heads of houses.

Two candidates are elected for every office of the court. The confirmation of one of them for the office of the judge and the other as a candidate for it depends on the governor, who designates new elections in case neither of these persons is confirmed. In the case of absence, illness or death of the judge, the candidate for the position carries out his duties, with the permission of the governor.

The people's judges receive payment on the basis of the customs existing on this matter.

The people's judges are equipped with special insignia to be worn when they are carrying out their official duties, as well as their official seals and books for the recording of judgments and deeds.

The close supervision of the keeping of the books is a duty of the uyezd chief, but meanwhile the responsibility for lack of observation of the established order falls upon the judges and chairmen of the sessions, according to who is concerned.

The people's judges are transferred /205/ to trial by the regional authorities for criminal breach of trust, on the basis of the decrees of the code of criminal law procedure which determine the order of arraignment of persons of the administrative department.

The people's court constitutes: a) courts presided over by one person, b) sessions of judges, and c) extraordinary sessions of judges.

692 All cases, both criminal and civil, begin before a single judge.
695 But the litigants have the choice, by mutual consent, to turn directly to a session for the examination of their cases, avoiding the single judges, and likewise to outside persons, whom the litigants entrust with the settlement of their disputes. The judgments of the chosen mediators are final, no matter how large the value of the suit is.

The mutual agreement of the litigants on the choice of mediators must be entered into a special book established for this purpose in the volost, and signed by the litigants. The judgments

[1] [Should be "has not been" - A.]

of the mediators are also recorded in the same book, which are signed and confirmed by both the seals of the mediators and of the litigants.

The people's courts of the nomadic population proceed to examine cases upon the complaints of private persons or upon a cummunication from the volost administrator or the uyezd chief. When the litigants disagree on the choice of a judge, the case is decided by a judge indicated by the plaintiff, but meanwhile the defendant is allowed to challenge two judges.

The decisions of judges, involving sentences of no more than 30 rubles, and no more than seven days of arrest, are recognized as final and are not liable to appeal.

The decisions of the judge are announced to both sides, with the issuance of copies of the decision in case of demand, authenticated by the affixing of the official seals of the judges.

The people's courts may hear testimony concerning every sort of deed and agreement among the natives subject to their court, with the exception of settlements concerning immovable property, when the right of property in them is confirmed by deeds made out under the force of the general laws of the empire.

/206/ Deeds issued by the people's courts must be signed by the sides in their own hands, or for illiterates, by no less than two trusted persons and witnesses. They confirm the signature and the official seal of the people's court authenticating it, and they are recorded to the letter in the corded /shnurovia/ book, under the appropriate number in the sequence.

Sessions of judges are called together in every volost, and are made up of all the judges, although a session is considered legally constituted when no less than three judges are participating. The sessions are called together when needed, at times determined in advance by the uyezd chief. The sessions take place in the presence of the volost administrator, whose duty it is to pay special attention to decorum in the place of meeting of the session.

The people's judges appearing at the session elect a chairman from among them, who directs the order of examination of the cases.

Cases of complaints concerning inconclusive decisions of single judges are subject to the jurisdiction of the sessions of the people's judges. The judgments of the sessions count as final, with the exception of judgments decreed in excess of their authority or in cases not subject to their authority.

It is considered the duty of the sessions of the people's judges

692 to encourage cases concerning the dismissal from official duties and bringing to trial those of their members who permitted clear abuses in their judgments. The uyezd chief presents the decrees on this subject to the oblast government.

The delivery to the sessions of the defendants and witnesses is the duty of the village authorities.

Complaints concerning unfinal decisions of single judges are transmitted in a period of two weeks from the day of the announcement of the decision to the volost administrator, for presentation to the session. After the opening of the session these complaints can be transmitted to the session itself.

[695] The people's court is carried on aloud and publicly.

/207/ Extraordinary sessions of the people's courts are designated, by order of the governor, for the judgment of cases in which residents of various uyezds or volosts are involved, as well as for the review of intercessions of the people's courts and their sessions on the banishment of the persons under sentence. The extraordinary sessions are composed of the judges of those volosts from which the litigants come or the persons under sentence, with no less than one judge from a volost.

The designation of the judges for an extraordinary session, except for those elected by the litigants, is done by the uyezd chief. Judges who have participated in previous sessions within a year take part only at their own wish.

Extraordinary sessions of the courts take place in the presence of the chief of the uyezd in which the session meets, or an official specially commandeered for this purpose. The duty of these official persons is exclusively to see to the decorum in the place of meeting of the session.

The extraordinary sessions of the people's courts act on the basis of the rules established for ordinary sessions.

[693] People's judges, who are absent from a session, ordinary or extraordinary, without legally acceptable reasons, are subject to a monetary fine of 10 rubles, by order of the uyezd chief, which can be appealed to the governor within a period of a month. These fines go for the building of places of confinement.

696 The carrying into execution of the decisions of the people's court is laid upon the volost administrators and village elders, under the supervision of the uyezd chief. Copies of the decisions carried out, with a note of their fulfillment, are preserved with the volost administrators. Persons carrying out the decisions, as well as the uyezd chiefs supervising them, are subject to legal responsibility and the reparation for damages for slowness and improper action in this connection.

/208/ CHAPTER XI. The Oath.

In the most recent times the oath (dzhan, guman, ant, kasam) 695. has acquired extreme popularity. In ancient times it was given only for purification from the charge of spilling blood (Aviz, of the Perovsk uyezd).

Only persons who have reached their majority can swear, because children do not understand the significance of the oath (dzhan kadryn bil'meydi). However children are permitted to swear by ignorant biis (Torgai).

The oath is rarely sworn in the Chimkent uyezd by the Dulaty and Chul'sirgeli clans (the steppe Sirgeli, of the El'bay, Yangabay, Akkungurdek, Aytbozym and Dzhaydak lineages), and the Bistangaly clan ("the five brands": Sirgeli, Isty, Oshakty, Dzhalair and Shaprashty).

The side which is required to swear eliminates several (the number is indicated in the bii's decree) persons or tents from the community designated for the oath, under the name of "disputables", whom it is impossible to choose to be among those to take the oath. Of the remaining number, the opposing side, i. e., the plaintiff and the defendant, "seize for the oath" (dzhan, dzhanga ustaydy), i. e., indicate the person who must "give" (bermek, utkuzmek) the oath.

According to Baymet Sagyndykov, in former times the side which was sentenced to the oath had the right to indicate persons, so-called kolshy, who themselves already chose who were to swear. But with the transfer of the Turkestan region to Russian dominion, this custom lost its force, as a consequence of which the number of fraudulent suits increased. (1) Sagyndykov suggests /209/ that if this

1. As will be evident from the account below, the institution of the kolshy still exists in several places.

customary law were introduced there would be far fewer false suits.

A time limit is established for the designation of those who are to swear. A period of time is also given for swearing the oath. The time limt for the choice of the juror is usually three days, if his community is a short distance away, or up to fifty days if it is far away, even extending to the return from the summer camps. The time for the taking of the oath is given for a longer period than for the selection of the juror, for in the former case, the period of time has the purpose of giving the juror a full opportunity to become acquainted with all the circumstances of the case and to know all the

• 195 opinions for and against it, while in the latter case, the time period is only in view of the distance of the community to which a person must go personally for the choice of the juror. Letting one of the dates lapse means the loss of the case.

The chosen person is told of the place where he must appear for the taking of the oath at a certain time, indicated in the decree of the bii.

The extension of the period for the taking of the oath is permitted as is stated in one document, "in accordance with the customary law and the Shariat", for valid reasons, for example, because of the illness of the juror, attested by trustworthy persons. For the decree of the postpnement of this oath, which has not yet "gone rotten" (sasymaydy), i. e., has not become impossible, the bii establishes a special document (Perovsk uyezd).

According to Torgai, if the juror allows the time for the oath to expire because of great distance or an unfortunate accident, the court decrees the judgment of the case to be lost to his side. But if the juror appears immediately after the decree of the judgment and explains the reason for the delay, he is not deprived of the right to swear.

The refusal or the flight of the juror from the oath indicates that his side is in the wrong and loses the case, "falls", (zhygylady).

If on the day of the oath the juror announces that he is completely unacquainted with the litigants, has come there himself only recently, /210/ and could not investigate anything, and therefore will not accept the oath on his responsibility, his side nevertheless loses, for the juror should have announced this exceptional situation at the time when he was chosen or before the elapse of the period, and the litigants should have eliminated him as one of the disputables.

If a man has been chosen among the jurors when it is not known whether he is at home or not, the defendant must tell the bii of his uncertainty there and then. When, on the injunction of the bii, he has procured proof (isentirib) that the juror has departed, the defendant receives a longer period in which to bring him in, depending on the distance involved. If the plaintiff does not wish to wait a long time, they allow him to choose another juror.

When the person chosen refuses, on the basis that although he lives in the community from which the oath is required, he belongs in the registers of another community, (1) and has no wish to condemn

1. Such a man is called kurcheles.

or exonerate the accused by his refusal, a new choice of a juror is permitted in a new period.

If the heirs of a murdered man desire, for the wergeld, to put an oath upon four men, then from the side of the defendant the biis must designate four persons as kolshi, who are obliged to furnish four accepters of the oath at a place indicated by the judges, to carry out the swearing of the oath imposed on them. In this case, if even one of the kolshi fails to appear or does not leave his village within the designated time, the guilty side must pay the wergeld. In case one of the swearers of the oath does not appear on time, however, at the designated place, the petition of the seekers of the wergeld is abandoned without consequence. If one or two of the persons who have accepted the taking of the oath are ill or have gone away somewhere they must present certification of this with the seals of outside trustworthy persons. Then the biis must designate a second period of time with an indication of the place where the takers of the oath must appear. But if they also fail to appear the second time and do not take the oath, then the suit for the wergeld is considered to be fraudulent. In /211/ case one or two of the kolshi from the side of the defendants fail to appear in the time designated, the latter side must pay the wergeld, regardless of whether the takers of the oath appeared. If one or two of the kolshi falls ill or is absent in a distant place, they are obliged to present certification of this from outside trustworthy persons. Then the biis must designate a second period of time. But if the kolshi fail to appear in the second period, the side of the defendant must pay the wergeld.

If the juror confirms by his oath a false fact without knowing it, having believed his side, the punishment for swearing falsely falls in the future life not on the cheater but on the cheated. For this reason even before the period of the oath, the unjust side reveals the truth, gives up the object of the suit or proposes a peaceful settlement (bitim, tatulaspak, karyndas bulmak), to which the plaintiff usually agrees because he is in an uncertain state about the outcome of the case and is afraid that if he loses the suit he will be required to pay the court costs and the biilyk. Another motive for making peace is the fact that from the religious point of view an oath is equally dangerous for both sides: punishment will be visited not only on the person who swore falsely, but also on him who demanded the oath, from the side of the innocent party. This is why one often finds written in the biis' books: "the plaintiff was unable to allow the defendant to swear the oath, and his suit was left without consequence, "or: "and he was

reconciled for such and such a sum", or "and they became kinsmen" (again, karyndash bulub kaldy), i. e., friends. (1)

1. Sometimes they choose an only son as the swearer, in the hope that his father will not allow him to swear.

Conscientious biis themselves advise the litigants not to bring the case to an oath, but to yield to compromise, doing this with hints such as: you will not get the whole horse, but his hoof won't be lost (tulpardyng uzi bitpes, tyuyagy dzhitpes). Often, especially when the defendant does not deny the justice of the suit but he is poor, the biis say: "Forgive this suit. Embrace each other and become /212/ friends" (bu dauyngnan kesh, ikeauyng kushaktasyb dos bul); if one of the litigants has a son, and the other a daughter, they add: "or still better, become matchmakers: matchmaking consummates the friendship" (bal'ki kuda bulyngdar: dostyng tubin kuda ayrady).

The swearers themselves impose pressure toward pacification, halting on the road and threatening one side by saying they will appear, and the other side by saying they will refuse.

Often the pacification is produced on the basis of the return of the stolen article. There are also cases where the plaintiff, who has been made "the friend" (dos) of the poor defendant by the bii, receives nothing from him but is already ashamed, being his "friend", to appear before the biis with a claim (Auliye-Ata uyezd).

If an oath is shown to be false, the opposing side wins the case. In addition, in order to make amends for this sin, fines can be imposed in favor of the poor, from an atton to one or three toguz, depending on the sum of the suit. This is called "putting the soul in place" (dzhandy urnyna salmak). The reason why no strict punishment exists for false oath is that the swearer usually accepts the oath on the urging of his kinsmen, and not because of inner conviction.

Among the Kirgiz, after the ritual of the swearing of the oath is completed, in order for a new witness to prove its falseness, his oath is required and the oath of one of his relatives. The previous oath is the then considered "putrified" (sasyb kaldy), i. e., invalid. One oath is defeated by two. The side which has given a false oath is sentenced to a higher fine, and the person who swore is scolded and despised.

The ancient oath (according to Karamulla and others, of the Perovsk uyezd) consisted of 1) their leading the swearer around the mazar /place of pilgrimage or tomb/, or 2) the juror (dzhanga shyk-kan) coming out on a hill and summoning the receiver of the oath

from the opposing side. A man came out from there with the words "I receive your soul", i. e., oath (aldym dzhanyngdy) and began to beat him with a whip. /Inserted page. Picture. Caption: Kazakh girl of the Perovsk uyezd. Drawing by Akhmatov. /*/213/ A battle began which often was transformed into a general brawl of all those present; or 3) their coming out alone from each side, armed with a spear, a sword, etc. It was presupposed that the one who was killed or forced to flee was in the wrong. (1)

1. Before the Russian court they now swear on the Koran. In the biis' books of the Perovsk uyezd one encounters the expression: "they were led into the mosque."

"False witness under oath is taking place oftener and oftener, bringing profit to the mullahs, who for mercenary reasons have assured the population that by slightly changing the words of the oath they could make it very terrible in its consequences, or completely unfrightening." M. Gotovitskii, "Znachenie i obriad prisiagi u kirgizov" /The meaning and ritual of the oath among the Kazakhs/, Iuridicheskii Vestnik, 1885, May, p.192

According to Kunakbai, in the Auliye-Ata uyezd, the very appearance (2)of the swearer in court and his declaration that he is

2. According to Ibragimov, practically speaking, the essential circumstance among the Kazakhs is considered to be not the oath itself, but the journey of the chosen persons at the time determined to the place designated for the trial. If on the given day, the chosen persons were there before sunset, this was quite enough. The person on whose behalf they came won the case. The villages of influential Kazakhs and sultans especially are designated as places for the oath. In recent times they have often begun to designate a village for the oath in which there is a mosque, and they give them the Koran to kiss, forcing them to say the names of Moslem saints who are completely unknown to the Kazakhs.

ready to take the oath for the member of his village or his kinsman, is considered as the taking of the oath. Neither the Koran nor prayers are involved. They also know that sometimes they are sent to a cemetery to say a prayer.

* [Not reproduced -- AJ]

695 According to Umburek, the bii asks the person who is to swear the oath: "Did you come to swear?" (dzhan bergeli kel'ding me). Then he admonishes him to speak the truth, reminding him that it is sinful (ubal) to lie. The swearer answers: "I came to swear to his innocence" (agyna dzhan bergeli kel'dym). The bii ends it by saying: "May you have a long life! Be gone!" (yasyng uzak bulsun, bar kitever).

According to Abdrakhman, the bii asks the swearer: "Why did you come?" "I came for the oath." "Do you know (bilesin be) the guilt or rightness of so and so and do you believe that he took such and such?" (algandygyna inandyng ba). "He did not take it, and I have come to take an oath on it." Now reminding the opposing side that the sin of a false oath under compulsion /214/ rests equally on both sides (ike dzhakka birdey), the bii advises for the last time that the two sides be pacified without carrying it to the oath. When he receives a refusal he lifts his arms according to the Moslem custom and says the blessing, i. e., the words "alla akbar" and places the palms of his hands on his face and his beard. Then he says to the swearer: "May the days of your life be long. If the thief (i. e., the person for whom you took the oath) deceived you, may he die himself" (umr yasyngiz uzak bulsun, agar seni aldagan bulsa uruny uzi ul'sin).

Among the Kirgiz, they formerly led them into the mazar /place of pilgrimage or tomb/ to cut a branch. Now the oath consists of appearance and declaration before the bii. The bii says: "Have you given away your soul (oath) because he is clear and did not steal?" This question is repeated three times. When he has received the answer "I have given it" three times, the bii says: "Go get out of my sight!"

According to Torgai, the following forms of the oath are found.

1) In the Auliye-Ata uyezd, they are either satisfied with the form of the oath set down from the words of Umurbek and Abdrakhman, or they lead the swearer within the wall of a saint /'s tomb/ which is well-known, for example, Tekturmas, Auliye-Ata. There the plaintiff takes the end of a branch from one of the trees in his hands, and the swearer cuts off this branch with the words: "O Saint! Find which of us is unjust and kill him!" (e auliya, kay karamyzdy tap, at).

2) Formerly the kinsmen of the man who was to take the oath dressed him in white, black, red (the symbol of grandeur - saulat), blue, and in general in clothing of one such color, so that the swearer would stand out in the midst of all of them. They tied an owl (ukke) to his head, and led him to a high hill, where the plaintiff and his relatives had gathered from the other side. The swearer

demanded from his relatives: "Take your soul" (al dzhanyngdy). 695 At that time small children too were swearers. The affair ended with a brawl without killing. No suit was made for wounds.

3) Formerly there was also a wager race between the swearer and the receiver of the oath of 40 paces. Both held each /215/ other by the hand. (1)After forty paces one turned to one side, and the

1. Nevertheless this race was called by the reporter a wager race (yarysyb).

other to the opposite side, and with this the oath taking also was ended.

4) The swearer (dzhan berguchi, dzhanga shykkan) and the receiver of the oath (dzhan alguchi, kolshi), go into a mosque, because this is the house of God (kudaidyng uyi) and say: "Find which of us is unjust" (koy karamyzdy tap) and then go out.

5) They take the Koran in their hands. In several places it is customary for the swearer to take the Koran and put it into the hands of the receiver of the oath, and in some places it is vice versa.

6) In the Perovsk uyezd, they sometimes dig a grave, on the demand of the receiver of the oath, as though for a dead person. In order to bring more fright to the swearer, they wash him and dress him in a shroud (keben), and then they lead him to the grave, out of which he emerges again through an opening.

7) In addition, in the Perovsk uyezd the oath takes place "by the Shariat and by the law."

The choice of the manner of the oath depends on the plaintiff. But the plaintiff always holds to the local custom (Torgai).

According to Absalyamov, of the Chimkent uyezd, the manner of taking the oath depends, by custom, on the plaintiff, who leads the swearer to the grave of some Moslem saint and forces him to stand with one foot on the grave itself, or to cut a twig from a tree growing over the grave, etc.

According to bii Sultan Kanaev, of the Chimkent uyezd, the biis propose to the person who is to swear the oath that he choose one of the following three forms of the oath: 1) to say "in the name of the all-powerful God" (billyagil' azim); 2) to take the Koran in his hands with words: "May the Koran hit (punish) me if I etc." (kurgan ursun, agar...), and 3) to cut off the branch (chibyk) of a tree on the grave of a saint, while a kolshi is holding the end of it. Now, however, the kolshi does not enter the wall of a Saint's shrine "from fear", and too the swearer does not /216/ cut off a branch, but simply

enters and then walks out. In the words of the bii, only the first two types are a real oath. The last type is a Kazakh habit (kazakchylyk, and actually this is not an oath (asyly ant imes). It is only taken as an oath because the Kazakhs are content with it (kazaktyng rizalygy). Bii Sultan Kanaev does not know the type of oath called "oblation" (kurmandyk) described in Makovetskii, I, p. 74.

The biis and aksakals do not go to the mazars and such places of oath. The presence of the plaintiff and the defendant during the swearing of the oath by the chosen person is not obligatory and is not customary.

The receiver of the oath, i. e., usually the plaintiff, is not obliged to go to the selected person or to lead him. He only indicates his presence. But it is the obligation of the defendant, if the oath is from his side to present the swearer. They always present the swearer with his relatives (again tugan). Otherwise he would not go alone, being ashamed of what they would say of him, such as: So and so went out to take the oath (falyanchi dzhanga chykty). But the people urge him and follow after him, not permitting him to evade the oath. If the relatives did not appear, the oath would not lose any of its significance.

The defendant, when he appears at the swearer's, slaughters a white mare (boz biya) for him, which is called dzhan sadakasy, i. e., the sacrifice for the sake of the oath, or a sheep - for a small suit. He is accompanied by one elder from each lineage (tup) of the community of the swearer. In order to avoid frightening the relatives of the swearer, they clothe the demand in the following form: "We have appeared before you in the interest of the entire people. A certain accusation has been brought against him (the defendant), whether it be slander, or by enmity. For this reason we have been permitted to point to you. Will you allow him to be lost? We are all convinced of his integrity, and for this we have all appeared. You step forward and we will follow after you." (Yurtchilik turesinen sagan kel'dik: ya tukhmet menen, ya khusumet menen sogan munaday dzhengdzhal yabasty, sogan seni atattuk munauny kuyderesin be? aktygyna baremizning kuzimiz dzhetedi, beremiz sol ushun kelib otyrmyz. Sen aldymyzdan yur, biz songyngnan erelik).

/217/ If the person chosen to take the oath refuses "to go out" (chykpaymyn), the elders threaten to exclude him from the clan (again chiliktan ayrylada), i. e., if someone should sue him, none of them would present the oath on his behalf.

They always appear a day in advance for the oath.

First of all the oath is imposed on that side which has a true

witness, who has publicly received syuyunchi for the discovery of the thief, in cases of theft. If there is no witness, the oath is imposed on the side of the defendant, as the weakest side. In addition, it can be required, for special motives: from the plaintiff's side, from the defendant himself, from the plaintiff himself, from the side which the plaintiff prefers (or rarely, the side the defendant prefers).

The oath is given to the side of the plaintiff in the following cases:

1) If it has a witness, as was stated above.

2) If the defendant does not enjoy favor in his village, for extraneous reasons.

3) When the defendant has already been caught in the act of a crime, which affects one part of the suit, or was under trial earlier and as a result he is no longer trusted.

4) When the plaintiff witnessed the commission of the crime personally, thus taking the place of a lawful witness. "I myself am a full witness of his theft" (kamil uzim gua men alganlygyna), he says in one of the documents of the biis' books of the Perovsk uyezd.

5) If the defendant is a woman.

The oath is imposed on the defendant himself ("on his black head", kara basyna) in the following cases:

1) When he is not yet registered in any group of ten of a taxable community, because he divided off from his family after the establishment of the official register of tents.

2) When the sum of the suit is so small that no other kinsman wants to submit himself to responsibility before God for such a trifle. /218/ 3) If the case is such that no one can know the truth but the defendant. This would be, for example, when there were no witnesses of the entrusting of something for safe-keeping, or when the defendant refuses to satisfy the plaintiff on the grounds that his deceased father and not he borrowed from the plaintiff or owed him, or if the time the affair took place is so far in the past that no one can establish an opinion as to the justice or injustice of the suit.

4) When indecent circumstances have been disclosed in a trial. Here the oath by one person is to avoid staining the reputation of others.

The oath is imposed on the family of the defendant in litigations concerning matchmaking and other family accounts, on the basis of the fact that such relationships are known precisely in the family.

The oath is imposed on the plaintiff himself and on his family with the same motives as were just mentioned, only, of course, in

• 195 case it is unsuitable to give the defendant himself the single oath.

The indication of the side from which the oath must be presented is given to the plaintiff (iki dzhaktama) to choose, on the condition of the defendant's consent to this: 1) when the village of the defendant is so far away from the court that the judges do not know whether it is convenient for the plaintiff to go there to choose a swearer, and whether he would not prefer to permit the defendant to choose a swearer from the plaintiff's village, which is less distant; 2) when the plaintiff stubbornly continues to stand by his demand, regardless of the obvious groundlessness of the suit. By giving the choice to the plaintiff, the court wishes to give him a full opportunity to prove the justice of his suit, so that after the case is judged against him he will not complain that the circumstances of the oath were disadvantageous for him (Mikebai, Perovsk uyezd).

Among the Kirgiz, if the plaintiff has a witness (ayak), he is sworn himself and also one of his kinsmen (yanasha), i. e., they obtain two oaths. If the plaintiff has no witness, then one oath is imposed on the side of the defendant (tanbysh). If there were /219/ no witnesses of the transmission of money from one person to another, the dispute is settled by the oath of whichever one of them wishes to swear. If both sides are ready to swear the oath, it is given to the defendant.

According to Umurbek, during the examination of a case the bii first of all recognizes the opinion of the defendant concerning the manner of imposition of the oath which is desirable to him. The bii says: Do you agree to receive the oath from "this one" (i. e., the plaintiff), and pay, or do you want to present the oath and clear yourself? (sen osunan dzhanyn alyb mal tuleuge razy me sen ya dzhan-berib kutuluga razy me sen).

In the Perovsk uyezd, for considereable lawsuits for a sum larger than 500 rubles, they designate two swearers, and for a sum higher than 2000 rubles, or for suits concerning wergeld they designate four.

In the Auliye-Ata uyezd, in cases of wergeld for a man they choose 4 jurors from 1000, 2000 or 5000 tent owners, but not beyond the circle of the forbidden degree of kinship. In cases of wergeld for a woman they choose 2 persons. In suits concerning the theft of 1-5 heads of livestock, one person from the close relatives swears an oath. For a theft of more than 20 animals, 4 persons swear (Chinybekov).

In September 1877, the biis of the Chimkent and Turkestan uyezds decreed: "We should try to settle cases without an oath. In designating an oath we should be goverened by the following: In cases

concerning up to 19 rubles, the oath is designated to one man from the group of ten. In cases up to 76 rubles, to one man from the group of fifty. In cases up to 152 rubles, to two persons from the village of the defendant. In cases up to 500 rubles, to four persons from two villages which are near that of the person for whom the oath is to be sworn. In cases up to 1000 rubles, the oath should be sworn by four witnesses of four villages, with which matchmaking is not permitted. In cases of over 1000 rubles, and in cases concerning wergeld, four persons from the volost should swear. A volost administrator, village elders, and biis must never be chosen as jurors. Also tiuris and hodjas must never be chosen as jurors."

A man who is generally known and respected by all can take the place of two ordinary jurors (Perovsk uyezd and others).

/220/ If two persons from one clan are accused together, one oath from their clan is sufficient.

If two persons from different clans are accused together, one oath is imposed from the clan of each of them, for a juror consents to acquit only his kinsman. But if, in spite of their being from different clans, they serve one master, or live in the tent of one and the same person, or have a common traveling companion, then one oath is imposed on this master or traveling companion(Torgai).

The more serious the accusation, the higher the sum of the lawsuit, the more frequently the defendant has been under trial, the better known he is, then the larger the circle of the clan or the community which can be designated for the choice of the juror, so that under difficult circumstances he can be cleared only if he is really innocent, for his enemies, they say, and there are more of them in a large circle, do not decide to consider him guilty. For example:

For a suit of	They impose	On the degree of kinship
1-2 horses	1 oath	Third degree (ush ata).
3-4 horses	1 oath	Fifth degree (bis ata).
Wergeld	4 oaths for a man, 2 for the murder of a woman.	Seventh degree (yete ata).

695 The oath is not imposed beyond the circle of the forbidden degree of kinship.

When imposing an oath on a kin group, they always select a group of a degree of kinship of an odd number: 3, 5, 7.

The inconvenience in imposing an oath on a kin group lies in the fact that the defendant has to bring jurors from very distant places, for example, from Bukhara, within the period of time, although it is given with consideration of the distance.

Since in many uyezds the groups of ten, groups of fifty, villages /221/ and entire volosts consist of only one group of kinsmen (atalas), for example, a group of ten will be from relatives up to 3-4 degrees of kinship, a group of fifty from relatives up to 5-6 degrees of kinship (5-6 ataga keledi), the imposition of an oath on a kin group is almost the equivalent of its imposition on a tax community.

When both communities, the kin one and the tax one, do not fully coincide, the biis on whose judgment the imposition of the oath on the clan or the taxable unit depends, exploit this circumstance in order to obtain bribes. It is obligatory to impose the oath on the clan only in suits concerning wergeld and yesir, eliminating those lineages which are related to the plaintiff.

For drivers who do not live in their villages, the oath is imposed not on their community but on their comrades in the caravan (kosdas, from the word kos - the traveling tent of the drivers).

An oath is imposed:

	Report from the Perovsk uyezd.	According to Torgai	According to the two Kirgiz: Kurpetai Dauletkulov and Daniyar.
On 10 tents	20 rubles	1 horse	1 horse
On 20 tents	-	-	2 horses
On 30 tents	50 rubles		3 horses.
On 40 tents	-		4 horses.
On 50 tents	100 rubles	2-3 horses	5 horses.
On 60 tents			6 horses.
On 100 tents	200 rubles		And so forth,
On a village	400 rubles and also about a fight.	4-5 horses	not more than one village(in cases of theft).

In the Chimkent uyezd, according to the communication of Absalyamov, in a suit /222/ concerning one horse one oath is given from a group of ten. In a suit for from 2 to 4 horses, one oath is taken from a group of fifty, with the elimination of two disputable persons. In a suit for from 5 to 8 horses, two oaths are imposed from the village. In a suit for 9-26 horses, two oaths are required, one from the village and the other from the volost, with the right to eliminate up to 4 persons from the village, and up to 8 persons from the volost. The plaintiff selects 4 oath takers from the volost of the defendant, for a murdered man, with the defendant being given the right to challenge up to 8 persons. For a murdered woman the plaintiff chooses two oath takers, one from the village of the defendant, and the other from his volost, and the defendant is not given the right to challenge anyone. 195

Where the kin communities coincide in general with the tax communities, as, for example, in Semirechie, the oath is primarily determined in the tax community. But where persons of different clans live together in one tax community, without having a basis for standing for each other under oath, as in Orenburg, Troitsk and in the Kurama uyezd (according to Torgai), the oath is designated from the clan, or, as they say, "tracing back to the ancestors" (ata kuub, suek kuub).

The larger the circle of the community out of which the juror is chosen, the larger is the number of disputables also. In a village there are usually 2 disputable persons in addition to official persons. The number and sometimes the names of the disputable persons or tents are recorded in the document with the note: "in addition to official persons."

The elimination of disputable persons is done by that side which presents the oath. The person who chooses the oath taker must be informed of the names of the disputable persons.

The disputable persons (actually kas, i. e., enemy or spur) are often: 1) enemies of the person who presents the oath; 2) mullahs, biis, official personages, and all superior persons to whom the suggestion that they take the oath for the sake of an inferior, would appear impertinent and 3) recluses, persons who are too young, guests and persons in in general whose opinions on a given question are incompetent for various reasons.

/223/ Tiuri, khodjas, volost administrators, biis and village elders are not chosen to take the oath for a simple Kazakh (Absalyamov).

According to bii Sultan Kanaev, a khodja can be chosen among the jurors in a suit among persons of the black bone. Khodjas are only eliminated among the disputable persons if they are at that moment

695 in dispute or in enmity with the cummunity from which the oath taker has to be chosen.

In the Kazalinsk uyezd, according to a report from E. A. Aleksandrov, khodjas are not freed from the oath, and in general no one is, except ishans. (1)

1. Formerly also members of the sultan's clan.

Among the Kirgiz, biis, manaps, volost officials and other persons of high standing are not excused from the oath. (2)

2. In Siberia, the agreement of the "disputable persons" who are eliminated is required before this can be done, and a voucher must be made to the effect that they or their clan are at odds with the clan of the litigant(Torgai)

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When it is necessary for someone to clear himself of suspicion outside of court, or to confirm his assertion or promise by an oath, they suggest to him that he say olda (instead of vallakhi, By God), or to drink up a quantity of water (su urttashi), or to step across a line scratched in the ground, or to make his statement facing the saint(auliyaga karab aytchi), or to lick the sharp edge of a knife (pshaktyng yuzin yala) or to lick the end of a finger, facing the moon. They attach so much importance to this oath out of court that they end a dispute informally (Torgai).

695 In making contracts the oath is sometimes used: "May God punish whichever one of us breaks this agreement" (osu suzimizdi buzganymzdy kuday buzsyn) . Or they lay a stone on the head (Makovetskii, I p. 49). This last custom no longer exists, according to Torgai, but they do say: "May your salt hit me, or the food which you have offered me, if I "etc., or: "I swear by the salt"(tuzingiz ursyn, nyanyngyz ursyn, tuzning khakynda). Swearing by the salt is a general Moslem custom.

In the conclusion of a pact for action against a common enemy /224/, the elders, yuzbashi, tubesh (standard bearer), and other honored persons in a party gather in one tent for a conference. They pledge themselves not to betray each other into the hands of the enemy, not to betray the total affair and not to hide booty, but to

674 Stealing among the Kazakhs is a rather
685 widespread crime. They steal horses, primarily. If the thief is caught there is the custom of taking the stolen animal away from him and adding to this a fine of twice its value. As the Kazakhs say - in such cases it is almost always a question of horses - ' on the neck an addition, to the tail a support ' (in Kazakh: muinena kosau, kutenia-terkiau). This punishment is
695 called 'aip' or 'aibana'. In case there are no witnesses, the oath of some outside person is needed /346/ who is known for his honesty and who knows the accused. If such a person is found and wishes to give his oath on the innocence of the accused, then the latter is definitely released from the charge. It must be said that this is a very reliable way in
[577] general of learning the truth. It costs the Kazakh nothing to lie himself, but for some reason he will not consent to take someone else's lie upon himself.

In general, the oath, as soon as it happen between Kazakhs and not to aid an infidel, that is, a Russian, has a very serious significance and is considered sacred. At the present time it is usually given with the kissing of the Koran in the presence of an honored person or mullah, but earlier, various rites were observed. For example, it was necessary to lick the fingernail, looking at the sun, or to say the oath with the muzzle of a loaded gun in the mouth. This has already gone out of use
[778] today. In important cases, however, even now, those who are to swear are invited to some holy sepulchre and it is suggested that as they say the oath they cut off the branch of a holy tree there. It is a rare Kazakh who will consent to this sacrilege if it is a false oath.

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681 distributed among the elders of the clan or lineage, etc.
602 The remaining half was further divided, part being dis-
613 tributed among the more distant kin of the victim; how much was thus given out was up to the family of the victim, but it was impossible to give nothing. A slighted kinsman would appeal to the elders of the community, and was given a share of the kun proportional to the closeness of kinship. The remainder was divided among the sons of the victim, or if there were none, among the next of agnatic kin.[159]

177.68 The unit for payment[1] after the reorganization of
681 Kazakh society under Russian impact was the aul; despite
621 the composition of the village at this time by segments of various lineages, it continued to act through a convenient fiction as though it were a unitary kin group. Support for payment of the kun was drawn from neighbors within the aul and from the kinsmen, both of whom were treated sociologically as a unit. If the guilty refused to pay, then the lineage or the clan, now settled in a volost', simply raided the guilty man's herds and made seizure of the requisite amount.[160]

622 The biis[2] would often require that kin in the seventh
602 degree of agnatic kinship take the oath in support of the
●695 accused. By this was meant, if the man were adjudged
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[159] Idem.

[160] Radloff, op. cit., I, 525.

[1] [i.e. of wergeld; cf. cat. 116, AHI Mongolia, p. 448ff. --Analyst]

[2] [on the biji, cf. cat. 116, AHI Mongolia, pp. 411-412 -- Analyst]

622 guilty, the kin up to the seventh degree would be re-
602 quired to support him in the payment of the indemnity.
695 Such a proceeding took place in 1885, some years after
613 the Russian conquest, and represents a certain harden-
177. ing of the judicial practice; nevertheless, this harden-
69 ing was precisely of those features observable in Kazakh
177. society in the previous era. The power of the bii's de-
69 cree now had the force of a court sentence, backed up
695 by an absolute coercive instrument: a police system,
602 a state mechanism, and so forth; but the person of the bii, and his kinship and social relations were more or less the same as before. The number of degrees of kinship recognized in a judgment were now fixed, but they were the same relationships which had been more vaguely defined in the preceding era.[161] Moreover, the entire proceeding was reported by an officer of the court to the Russian authorities; this signalizes the fact that the judges now had to bear in mind how the Russian provincial administration would respond to a judgment of a certain sort. Nevertheless, from all this we may see how vital the principle of kinship remained in the processes of adjudication, even under conditions of acculturation. We may observe how considerations of kinship operated in the legal process; and how legal data are significant in the interpretation of the consanguineal system.

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[161] Dingelstedt, 520.

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695 602 The role of affinal kinship in the legal process may also be deduced from the fact that in addition to support by one's agnatic kin (father, son, brother, father's brother, etc.), one could also call on one's wife's sister's husband to take the oath on one's behalf, provided that his loyalties had not already been engaged on the other side. Cognatic kin, too, played a role: the sister's son, and the mother's sister's son (maternal parallel cousin).[164] The relationship of the mother's brother nagaŭ to sister's son or dzien has already been mentioned in respect to the payment of the kalym, or debts to strangers, and so forth. It is simply a further pursuit of the same principles to observe it in the restitutive process of the law as well.

602 The new kinship relationships that are brought out here relate to the closeness of mutual support between husbands of sisters, those who are badŭa to each other, and sons of sisters, those who are bŭle to each other. A quite different principle is to be observed in these relationships: the avunculate, nevertheless, implied no systematic restructuring of the system of agnatic relationship. In the case of children of sisters, those who are bŭle to each other, it is quite clear that there is indeed a systematic attack on the agnatic principle, because in addition to the mother's brother

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[164] Ibid., 31.

58 reciprocal one; on coming of age, the son could make no more demands on the father; the allotment made was at the same time a quittance of further obligation.

428 A distinction was made between the inheritance of real property and the transmission of such intangibles as authority. The father was the absolute lord in his family, and his authority passed, in accordance with the principle of primogeniture, to the eldest son, or lacking a son, to a brother of the deceased. Related families were gathered into villages, aul, and a village elder, or bii, generally had a position of influence in public affairs, and a limited amount of authority in intra-family matters. Thus there was a limitation on the paternal power.

[428] The leadership of a sub-lineage, a village, or a family, passed in the direct line through the eldest sons.[168] The status of bii some decades later, in the 1860's, is described as quasi-hereditary, and a case is cited by Valikhanov in which it remained in one family through four generations.[169] The office later came to be appointive, and only quasi-hereditary.

695 Among these Kazakhs of the Middle Horde, one means of settling disputes is reported as having especial promi-

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[168] von Lebedour, II, 459-461.

[169] Valikhanov, 162.

[Middle Horde]

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nence, the use of affinal ties. The bii would propose that a youth of one side marry a sister of the other; or alternatively, that one party marry off his son to a daughter of the other, provided that neither is already betrothed. The disputants would then embrace and call each other kuda, father-in-law of the respective children. In such a case, the children must be eligible to marry according to the rules of exogamy.[170] The close interrelation between the kinship system and the law is demonstrated in the interfunctioning of both consanguineal and affinal relationships in the adjudicative process.

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The legal process continued to function within the kinship system even under conditions of acculturation, as evidenced in the following case among the Kazakhs of the Middle Horde in the 1870's. A man had two older brothers who had been allotted their shares of the father's estate during the lifetime of the father, while the youngest remained by his father's side until the death of the latter. Through the principle of ultimogeniture, the residual property should have gone to the youngest son, but the two older brothers threatened to take the herds and pasturage away from him. The youngest brother then appealed to his legal authorities, the biis of his community. (Note: the Kazakhs of the Middle Horde had been

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[170] Ibragimov, 237.

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longer under Russian rule than those of the Great Horde. The acculturative process had proceeded farther in the Middle Horde than in the Great Horde as of the 1870's, as will be seen from the issues raised in the pleadings.) The older brothers argued that the Kazakh customs were no longer in force, and that Russian law required an equitable distribution of the paternal estate regardless of the settlements made on the older sons by the father during his lifetime. The matter thus presented to the biis brought from them the decision that the youngest son, the residuary legatee, had to give up one of his winter camps to the other two. (Evidently a wealthy estate was in question here.) The youngest son appealed to the Russian courts, who advised him simply to comply with the decision of the biis, but to take one of the older brothers' winter camps instead. The youngest son declined both decisions.

His appeal to the Russian courts was strongly resented by the community and he was threatened with arrest, whereupon he removed to a nearby town, and the entire affair was placed in the hands of the local biis, but it was left unsettled. Finally the courts found in favor of the youngest son after the appointment of a new governor general in the region.[171]

[171] Ibid., 253-257.

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A number of salient features of Kazakh family life in the Middle Horde are brought to light in this case: the practice of allotment to all sons but the youngest during the lifetime of the father; the idea that they thus gave up all further rights in the estate of the father; the principle of ultimogeniture; the role of the bii in settling disputes; the break-up of family unity through a quarrel between or among brothers. The measure of the degree of acculturation is likewise made precise in this matter. We note a number of new features: the appeal to Russian practices in inheritance; appeal to the Russian courts to decide the matter; the resentment by the Kazakh community of the Russian appeal; the final decisive role of the Russian administration--which, it is important to note, found for the plaintiff in accordance with the Russian court's conception of what the Kazakh custom was, and rejecting the elder brothers' notion of what the Russian custom in inheritance was. The flight to the town to escape the resentment of the community made by the youngest brother indicates nothing about acculturation: it could have been a new feature brought in by Russian contact, it could have been an old feature, because towns have existed in the vicinity of the steppe for many millennia.

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The Middle Horde differed from the Great Horde in two respects: it exhibits no trace of any dual organization, a feature of the large-scale social structure of